

1 THE HONORABLE RONALD B. LEIGHTON
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5 IN THE UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 vs.

11 WILLIAM P. PINK,

12 Defendant

13 Case No.: CR08-5031RBL

14 ORDER GRANTING DEFENDANT'S
15 MOTION TO WITHDRAW PLEA

16 This matter comes before the Court on Defendant William P. Pink's motion to withdraw
17 his guilty plea and to dismiss the indictment. [Dkt # 33] Having considered the motions and the
18 entirety of the record developed, the Court GRANTS Defendant's motion to withdraw his plea
19 and DENIES his motion to dismiss the indictment.

20 **I. Facts**

21 Mr. Pink pled guilty on March 23, 2008, before this Court to being a felon in possession
22 of a firearm. Mr. Pink was a passenger in a car traveling in the Quinault Indian Nation (the
23 Reservation) when Grays Harbor County Sheriff deputies stopped the car for traffic infractions.
24 The deputies arrested the driver for driving with a suspended license. After determining that Mr.
25 Pink was wanted on several outstanding warrants, the deputies arrested him also. Incident to his
26 arrest, the deputies found ammunition in Mr. Pink's pocket and an unloaded hunting rifle in the
27 vehicle. Mr. Pink admitted the rifle was his and produced valid hunting tags issued to him by the
28 Quinault Tribe. He indicated that he was a felon, but that his right to bear firearms "may have
been restored by the tribe." [Dkt # 33]

1 Since his plea, Mr. Pink alleges new information has come to light which would have
2 changed his plea decision if he had known it at that time. First, notes from Mr. Pink's
3 Community Corrections Officer (CCO) indicated that the CCO had told Mr. Pink that his right to
4 possess a firearm on Quinault Indian land had to be determined by Quinault police. Second, Mr.
5 Pink has an assessed IQ of 62, considered "mildly mentally retarded." [Dkt # 33] Mr. Pink
6 argues that the Court should view the novelty of the CCO's notes in light of Mr. Pink's mental
7 status, and that this combination of factors meets the standard to withdraw his plea. The United
8 States asserts that, due to lack of novelty, they do not.

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10 II. Analysis

11 A defendant may withdraw his guilty plea after it is accepted but before sentencing if he
12 demonstrates "a fair and just reason for requesting the withdrawal." Fed. R. Crim. P. 11(d)(2)(B).
13 This standard "is applied liberally." *United States v. Garcia*, 401 F.3d 1008, 1011 (9th Cir.
14 2005). Evidence is sufficient if it "could have at least plausibly motivated a reasonable person in
15 [the defendant's] position not to have pled guilty had he known about the evidence prior to
16 pleading." *Id.* at 1011-12.

17 Mr. Pink first submits the CCO's notes from their meeting where the CCO told Mr. Pink
18 "to contact the tribal chief of police. If allowed [Pink] would have to keep his guns on the
19 reservation at all times." [Dkt # 33, exh. 1, at 1] Pink argues this evidence demonstrates that he
20 understood he was prohibited from possessing a firearm, but believed that his rights on the
21 Reservation may be different, and that his belief was reasonable.

22 Further buttressing his claim, Mr. Pink argues that his diminished mental capacity
23 becomes more significant in light of his possible defenses based upon the other evidence. Mr.
24 Pink argues that his defense is strengthened because application of the "reasonable person"
25 standard to him is unfair. *See Garcia*, 401 F.3d at 1011. Because of Mr. Pink's diminished
26 capacity, he would not have been able to make the same judgments when confronted with the
27 conflicting information between his known prohibition on firearms and the information given to

1 him by his CCO. Additionally, he did not appreciate the importance of this information when
2 conferring with his attorney about the decision to enter a plea.

3 Looking at this evidence in the light of a reasonable person in the defendant's position,
4 the Court FINDS the evidence could have motivated him to change his position. *See Garcia*, 401
5 F.3d at 1011-12. Mr. Pink's CCO told him that the status of his right to carry a firearm on the
6 Reservation was dependent upon the "tribal chief of police." Mr. Pink was then issued game tags
7 and hunting rights by the Tribe. In light of Mr. Pink's diminished mental capacity, this
8 information can be viewed as newly discovered. This new information suggests that a reasonable
9 person with this information may have made a different decision than a reasonable person
10 without it. *See id.* Mr. Pink's motion to withdraw his guilty plea is GRANTED.

11 Mr. Pink also moves to dismiss the indictment, but does not support his request with
12 statutory authority, case law, or argument. Dismissal is considered an extreme remedy. *See*
13 *United States v. Lopez*, 4 F.3d 1455, 1464 (9th Cir. 1993). Mr. Pink's motion to dismiss the
14 indictment is DENIED.

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16 **III. Conclusion**

17 Mr. Pink has shown sufficient evidence to support his request to withdraw his guilty plea
18 and that motion is GRANTED. He has not demonstrated why the indictment should be dismissed
19 and that motion is DENIED. [Dkt # 33]

20 IT IS SO ORDERED.
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22 Dated this 1st day of August 2008.

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25 RONALD B. LEIGHTON
26 UNITED STATES DISTRICT JUDGE
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